

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

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IN THE MATTER OF  
RHODE ISLAND STATE LABOR  
RELATIONS BOARD  
AND  
PAWTUCKET HOUSING AUTHORITY

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CASE NO. ULP-4564

DECISION  
AND  
ORDER

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the Pawtucket Housing Authority (hereinafter Respondent) based upon an Unfair Labor Practice Charge (hereinafter Charge) filed on February 18, 1992, by Teamsters Local 64 (hereinafter Union). The Charge, in substance, alleged that the Respondent had:

"(a) Unilaterally excluded bargaining unit positions from the unit after agreeing to include them;

(b) Assigned management employees to perform bargaining unit work;

(c) Refused to comply with a bona fide arbitration award." (Underlining in original).

Following the filing of the Charge, an Informal Conference was held on April 23, 1992, between representatives of the Union and Respondent with an Agent of the Board.<sup>1</sup> When the Informal Conference failed to resolve the Charge, the Board issued the instant Complaint on October 28, 1992, wherein it alleged in Paragraph 3 of the Complaint:

"That the Respondent has unilaterally excluded bargaining unit positions from the unit after agreeing to include them; has assigned assigned (sic) management employees to perform bargaining unit work; and has refused to comply with a bona fide arbitration award, in violation of 28-7-13 (5), (6), (7), (10), and (11)."

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<sup>1</sup> At the Informal Conference, the Charge was amended by alleging that the original charges were in violation of R.I.G.L. 28-7-13 (5), (6), (7), (10), and (11).

An Answer to the Complaint was filed by the Respondent on November 9, 1992, denying the substantive allegations of the Complaint.

A Formal Hearing in this matter was held on January 6, 1993, with representatives of the Union and the Respondent fully participating therein. The Hearing was closed but thereafter, both the Union and the Respondent requested the Board to re-open the Hearing. The Board did so and a further Hearing took place on July 27, 1993. At the conclusion of the Hearing on July 27, 1993, the parties indicated their desire to file written Briefs. The Brief of the Respondent was received by the Board on September 14, 1993, and that of the Union on September 15, 1993.

In arriving at the Decision and Order herein, the Board has reviewed the testimony, the exhibits, and the Briefs of both the Union and the Respondent

#### **I. FACTUAL BACKGROUND**

The Union and the Respondent entered into a Collective Bargaining Agreement as of April 1, 1989, covering the period April 1, 1989, to March 31, 1992. (Employer's Exhibit 2 and Union Exhibit 10). Article I of said Collective Bargaining Agreement provided that:

"The Authority recognizes the Union as the exclusive collective bargaining unit, so certified by the Rhode Island Labor Relations Board for all persons employed by the Authority in the following Classifications.

|                     |                         |
|---------------------|-------------------------|
| Project Manager     | Sr. Service Coordinator |
| Program Manager     | Program Clerk           |
| Receptionist/Typist | Bookkeeper              |
| Management Aide     | Tenant Selector         |
| Clerk/Cashier"      |                         |

Article VI of said Collective Bargaining Agreement entitled "Stability of Agreement" provided that:

"No agreement, understanding, alteration or variation of the terms or provisions of this Agreement herein contained shall bind the parties hereto, unless made and executed in writing by the parties hereto.

The failure of the Authority or the Union to insist, in any one or more incidents, upon performance of any of the terms and conditions of this Agreement shall not be

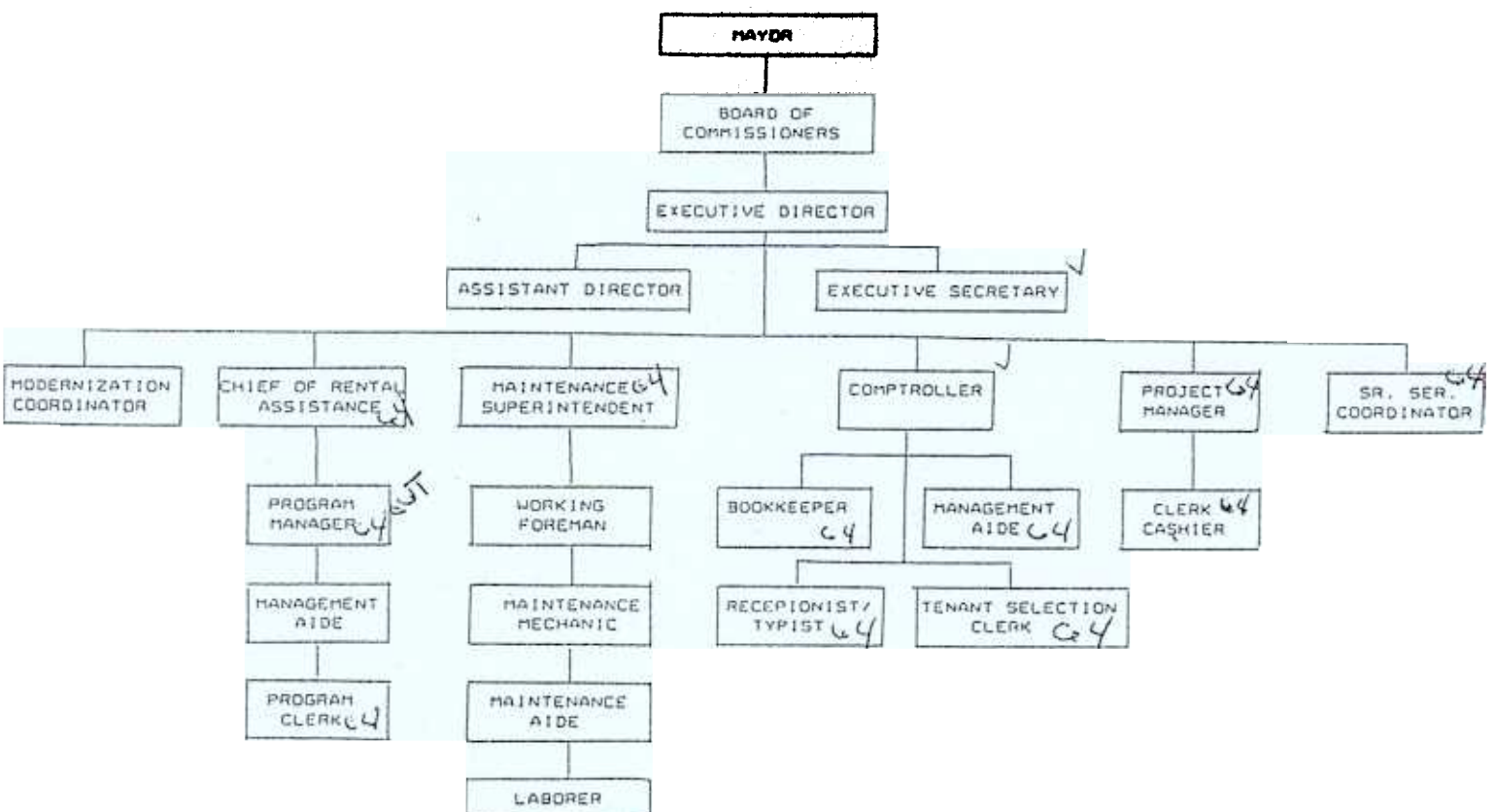
considered as a waiver or relinquishment of the right of the Authority or the Union to future performance of any such term or condition and the obligations of the Union and the Authority to such future performance shall continue in full force and effect."

Article VII of said Collective Bargaining Agreement provided for the posting of a Seniority List in January of each year, showing the name, date of project employment, and date of entering service.

During the term of said Collective Bargaining Agreement, the Respondent had in existence a Personnel Policy. (Respondent Exhibit 1) which provided in I. D. thereof in relation to Amendment of said Policy that:

"The personnel policy may be amended only with the approval of at least three members of the Board of Commissioners and the recognized representatives of the employees."

Article II B of said Personnel Policy contained the following Chart:



(There was no explanation as to the meaning of checkmarks and numbers on the Chart so they will be disregarded by the Board).

Following the Chart on Page 3 of the Personnel Policy (Respondent's Exhibit 1) appears the following:

"1. Administrative, Non-Union

Executive Director, Assistant Director, Comptroller, Maintenance Superintendent, Executive Secretary, Modernization Coordinator, and Chief of Rental Assistance.

2. Management/Office (Teamsters Local Union No. 64)

Project Manager, Program Manager, Senior Services Coordinator, Bookkeeper, Management Aide, Clerk Cashier, Program Clerk, Tenant Selection Clerk, and Receptionist/Typist.

3. Maintenance, Union (Laborers' Union Local 1217)

Working Foreman, Maintenance Mechanic, Maintenance Aide, and Laborer.

4. Others

Temporary, part-time or special purpose funded employees."

The minutes of a regular meeting of the Board of Commissioners of the Respondent held on February 9, 1990,<sup>2</sup> (Pages 87-91 of Respondent's Exhibit 3) reflect at Page 91 thereof that:

"Under new business, Commissioner Varone advised the Board that he had received a letter from employees--Mark Rowland and Frank Alexander requesting permission to enter the Teamsters Union. Director Burgess stated that he strongly objected on the grounds that Mr. Rowland and Mr. Alexander both held senior staff positions and that they served in a supervisory capacity and as such are often required to be involved in disciplinary action against other union members. Additionally, Director Burgess argued that in the event of a strike or job action, he must rely on his division heads to continue operations and that division heads who are also union members would be required to honor other union actions, rather than support the Director. Commissioner Varone made a motion that Mr. Rowland and Mr. Alexander be allowed to join the union. The motion was seconded by Commissioner Nolan and a vote was taken with Vice

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<sup>2</sup> At the time of this meeting, John S. Burgess (hereinafter Burgess) was the Executive Director of the Respondent.

Chairman Monahan voting yes and Chairman Sliney  
Commissioner Papineau voting no."<sup>3</sup>

While the minutes of the meeting of February 9, 1990, do not reflect the same, it was the uncontradicted testimony of the then Executive Director, Burgess, that it was Commissioner Varone's position that anyone employed by the Respondent should be allowed to join the Union "if they so choose". (Union Exhibit 9, Page 7 Deposition of Burgess).

It is to be noted at this point that at no time did the Commissioners vote to amend the Personnel Policy which specifically placed the Chief of Rental Assistance and the Maintenance Superintendent as "Administrative, Non-Union". There was no evidence to establish that the Collective Bargaining Agreement was amended, in writing, to include them within the bargaining unit as set forth in Article I of the Collective Bargaining Agreement which required amendments to the Collective Bargaining Agreement to be in writing and executed by the parties thereto

At some point in the Spring of 1991, the then Executive Secretary (classified as Administrative, Non-Union the same classification as that of Mr. Rowland and Mr. Alexander) requested to be included in the bargaining unit represented by the Union. On May 31, 1991, Burgess wrote to Mr. Paul Hanoian, Secretary/Treasurer of the Union (hereinafter Hanoian) advising him that the Board of Commissioners of the Respondent had voted to allow the Maintenance Superintendent and Chief of Rental Assistance (two (2) administrative positions) to enter the Union "thereby

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<sup>3</sup> Mr. Rowland (i.e. Mark Rowland) was Chief of Rental Assistance (Tr. Vol. I, Page 14) and Mr. Alexander (i.e. Frank Alexander) was Maintenance Superintendent (Tr. Vol. I, Page 14) and both were listed in the Personnel Policy as Administrative, Non-Union.

While the actual vote was to allow Mr. Rowland and Mr. Alexander "to join the Union", it is clear from the record that they both were thereafter included in the Union's bargaining unit. (Tr. Vol. I, Pages 14 and 15). Needless to say, they were both free to join the Union if they so desired. The real issue was their inclusion in the Union's bargaining unit.

setting the precedent for all administrative people to do the same if they so chose". Burgess further said:

"In view of this, I have no objection to any staff people at the Pawtucket Housing Authority availing themselves of the same union alliance which was granted to the above two positions." (Union Exhibit 2).

On June 3, 1991, Hanoian wrote to Burgess acknowledging receipt of Burgess's letter of May 31, 1991. (Union Exhibit 2) and concluded by saying: "...it appears that a meeting may be in order with the Pawtucket Housing Authority to conclude the aforementioned business at hand". (Union Exhibit 3). On the same day, i.e. June 3, 1991, Burgess sent a Memorandum to "All Members of Teamsters Local Union 64" advising them that attached was Amendment No. 3 to "your copy of the current labor contract". (Union Exhibit Attached to the Memorandum was a written amendment to Collective Bargaining Agreement effective May 31, 1991, wherein the position of Executive Secretary was added to the bargaining unit and set forth the salary for said position. (Union Exhibit 4).

On June 17, 1991, Burgess sent a Memorandum to "All Members of the Teamsters Local Union 64" advising them that attached Amendment No. 4 to "your copy of the current labor contract". (Union Exhibit 5). Attached to the Memorandum was a written Amendment to the Collective Bargaining Agreement effective June 17, 1991, wherein the position of Comptroller was added to the bargaining unit and set forth a salary for said position. (Union Exhibit 5).

Respondent's Exhibit 3 is composed of copies of the minutes of all meetings of the Board of Commissioners of the Respondent between September 27, 1987, and November 10, 1992. A review of said minutes with respect to the inclusion of the positions of Executive Secretary and Comptroller within the bargaining represented by the Union will show that:

1. At the meeting of the Respondent's Board of Commissioners held on May 30, 1991, (Respondent's Exhibit 3, Page 138) the Vice Chairman of the Board of Commissioners, Anthony F. Varone, stated

that he felt that the position of Executive Secretary should not be a Union position.<sup>4</sup>

2. At the meeting of the Respondent's Board of Commissioners held on June 13, 1991, (Respondent's Exhibit 3, Page 144)<sup>5</sup> a discussion was held on the request of the Comptroller of the Respondent, James Goff, "to join the Union". The minutes of this meeting recite that: "The Board of Commissioners want to discuss this matter with Mr. Goff at the next meeting. Commissioner Nolan asked if this was a management position and the response was yes. The feelings of the Commissioners are that management people should not be in the Union and because his application was accepted this does not mean he is a Union member".

3. At the meeting of the Respondent's Board of Commissioners held on June 20, 1991, (Respondent's Exhibit 3, Page 146)<sup>6</sup> the minutes reflect that:

"Comptroller Goff referenced to joining the union. Mr. Goff stated that as of May 30, 1991, Mary Lennon had joined the Union and that left him as the only person without a contract. Vice Chairman Varone said that his position was a management position and if he wanted to they could give him a one or two-year contract. Director Burgess reminded the Board that they had passed a motion not to allow any more contracts. When questioned by Chairman Monahan, Mr. Sabatini stated under the Housing Authority Personnel Policy, Mr. Goff's position was management position and if he is going to be a member of the Union, the Housing Authority Personnel Policy must be revised. Director Burgess said that the Board allowed Maintenance Superintendent and the Chief of Rental Assistance to join the Union and they were part of management and that it would be inconsistent now to deny the same opportunity to other management positions. Vice Chairman Varone made a motion to table the discussion on this matter until the next meeting. This motion was seconded by Commissioner Walsh." (Underlining Added).<sup>7</sup>

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<sup>4</sup> Executive Director Burgess was not in attendance at this meeting.

<sup>5</sup> Executive Director Burgess was not in attendance at this meeting.

<sup>6</sup> Executive Director Burgess was present and in attendance at this meeting.

<sup>7</sup> When the Board of Commissioners added the Maintenance Superintendent and Chief of Rental Assistance to the bargaining unit of the Union, no change was made in the Personnel Policy which listed their positions as "Administrative, Non-Union". Additionally, the Board would again note that the discussion about

4. At the meeting of the Respondent's Board of Commissioners on July 9, 1991, (Respondent's Exhibit 3, Page 148) the minutes reflect that:

"The Board of Commissioners then reviewed revisions to the Personnel Policy. The Board's position was that the Executive Secretary and the Comptroller should not be in the Union and that the Chief of Rental Assistance and the Maintenance Superintendent have already been approved by the Board to be in the Union. Vice Chairman Varone stated that both the Maintenance Superintendent and the Chief of Rental Assistance were the only ones in the Union and the Executive Secretary and the Comptroller should not be. Chairman Monahan said when Mary Lennon is assigned to Galego Court, she would be in the Union. The Board feels that neither Mary Lennon nor Jim Goff can be Union members until the Board approves it. Chairman Monahan asked Mr. Sabatini his opinion and he said that they need Board approval. Director Burgess felt that a precedent had been set by the Board due to their allowing both the Maintenance Superintendent and the Chief of Rental Assistance to be in the Union and he further stated that if the matter goes to arbitration, the PHA would probably lose at a cost of several thousand dollars. Also that the Union could approve this matter. Commissioner Walsh asked why Director Burgess allowed them to pay dues. He said he had no control over that. A motion was made by Commissioner Nolan, seconded by Vice Chairman Varone not revise (sic) the personnel policy to include the positions of Executive Secretary and Comptroller from administrative positions. All Commissioners approved said motion with the exception of Commissioner Papineau."

5. At the meeting of the Respondent's Board of Commissioners held on February 20, 1992, (Respondent's Exhibit 3, Page 175) the minutes reflect that "Mr. Sabatini notes that a Seniority List for Teamsters Local 64 has the names of James Goff and Mary Lennon on it. It is his opinion that because these names are on that list, the Housing Authority is not acknowledging that they are in the Union. In fact, they are not Union Members"

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belonging to the Union was not the issue but rather whether the Comptroller position should be included within the bargaining unit of the Union.

Mr. Sabatini was legal counsel for the Respondent at that

<sup>8</sup> Other evidence showed they both were paying dues to the Union. Once again, the confusion between membership in the Union and inclusion in the bargaining unit is confirmed. It should also be noted at this point that over eight (8) months had passed since Burgess had included the positions of Executive Secretary (Mary Lennon) and Comptroller (James Goff) within the bargaining unit represented by the Union. (See Union Exhibits 4 and 5).



6. At the meeting of the Respondent's Board of Commissioners held on April 10, 1992, (Respondent's Exhibit 3, Pages 187 and 188) the minutes reflect that a lengthy discussion took place relative to a new Collective Bargaining Agreement with Chairman Varone assuring the bargaining representatives of the Union that they wanted to work out a contract. However, the minutes further reflect that

"Chairman Varone opened the negotiations by addressing the issue of the Executive Secretary and the Comptroller pursuit of entering into the union. Chairman Varone stated that we have a legal opinion from our attorney, Mr. John Sabatini, that these two positions are excluded from the union. Chairman Varone suggested that until this issue can be resolved, the Board is reluctant to pursue the issues of the contract. Vice Chairman Monahan and Commissioner Nolan reinforced the opinion of Chairman that the two positions be excluded from the union and until that issue is resolved, further negotiations be delayed. Mr. Paul Hanoian, Local 64 Bargaining Agent, disagreed with the Commissioners. He stated that we have no right to exclude anyone from joining the union. He stated that the Comptroller and Executive Secretary of the Providence and Woonsocket Housing Authorities are in the union. By refusing to discuss any matter other than the two positions, is a failure to negotiate in good faith. Executive Director Moussally stated that he agrees with the Commissioners about the two positions being excluded from the union. He asked that negotiations be postponed until after the April 23rd grievance hearing. Mr. Moussally requested the delay for two reasons:

1. He has just taken over the duties of Executive Director on Monday and has not had enough of time to prepare.

2. The issue of the Executive Secretary and the Comptroller may be settled at the grievance hearing.

Donna Sheldon, Union Steward, asked what if the issue was not resolved at the hearing, would we be meeting to discuss the contract?"

These minutes further reflect that

"Chairman Varone stated that the Authority does not want the two positions discussed included in the union and for the record wanted it recorded that for any other entrance into the union, the Commissioners should be asked and vote on the application. The Commission voted not to include these positions and their decision should stand."<sup>9</sup>

7 At the meeting of the Respondent's Board of Commissioners held on August 26, 1992, (Respondent's Exhibit 3, Page 012) the

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<sup>9</sup> Once again, the confusion between the Union membership and inclusion of the positions within the bargaining unit is evident.

minutes reflect that the then Executive Director, Roland C Moussally, (hereinafter Moussally) reported to the Board of Commissioners on negotiations with the Union and that agreements had been made on several items. However, it was the position of the Respondent that: "The Authority will not agree to the inclusion of the Comptroller and the Executive Secretary in the contract".

8. At the meeting of the Respondent's Board of Commissioners held on October 29, 1992, (Respondent's Exhibit 3, Page 019-020) the minutes reflect that in relation to the contract with the Union:

"Director Moussally presented all the points discussed and the members present were in agreement. Chairman Varone stated that the Board would sign the contract provided that Item No. 16 in the bargaining agreement would read: The Pawtucket Housing Authority and the Union agreed to allow the issue of the position of Comptroller and Executive Secretary to be decided through the arbitration process. Both parties have the right to appeal the arbitration decision."

9. At the meeting of the Respondent's Board of Commissioners held on November 10, 1992, (Respondent's Exhibit 3, Page 022) the minutes reflect that:

"Negotiations with Local 64 have been completed and a tentative agreement has been verbally given. Terms of the agreement are enclosed. Executive Director Moussally asked for permission to accept the contract, a motion was made by Commissioner Nolan, seconded by Commissioner Rego to accept the agreement. All Commissioners voted in favor of said motion."<sup>10</sup>

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<sup>10</sup> The minutes do not have attached the proposed agreement. However, Union Exhibit 10 is entitled "Memorandum of Agreement" and is signed by Moussally on November 30, 1992, and by the Union on November 24, 1992. This Memorandum of Agreement extended the prior Collective Bargaining Agreement through March 31, 1993, and contained changes in wages, work week, longevity, holidays, work performed on holidays, insurance, Call-In Time, PHM Certificates, vacation posting, bereavement leave and contained a final Paragraph 13 which reads as follows:

"13) The Pawtucket Housing Authority and Teamsters Local Union No. 64 agree to allow the issue of the appropriateness of the position of Comptroller and Executive Secretary as covered positions under the Labor Agreement to be handled through the arbitration process. Both the Authority and the Union reserve their rights to appeal the decision of the Arbitrator."

## **II. POSITION OF UNION**

It is the position of the Union that the Respondent breached an Agreement to include the positions of Executive Secretary and Comptroller within its bargaining unit and that such breach constitutes interference with, restraint and/or coercion of employees in the exercise of their statutory rights and constitutes a refusal to bargain in good faith with the Union in violation of R.I.G.L. 28-7-13 (6) and (10).

The Union argues that the agreement to include the positions of Executive Secretary and Comptroller within the Union's bargaining unit as represented by Union Exhibits 4 and 5 is binding upon the Respondent for three (3) reasons:

1. The Executive Director (Burgess) was acting within the bounds of his actual authority in labor relations to enter into the agreements. (i.e. Union Exhibits 4 and 5).

2. The history of labor relations between the Respondent and the Union, including the acts and omission of the Respondent's Board of Commissioners, is evidence of at least apparent authority of the Executive Director (Burgess) to enter into those agreements, and

3. The Board of Commissioners ratified the agreements by failing to repudiate the same even after the inclusion of the two (2) positions was brought to its attention. (See Brief of Union, Page 2)

## **III. POSITION OF RESPONDENT**

It is the Respondent's position that the positions of Executive Secretary and Comptroller should not be included in the bargaining unit because the Respondent's Board of Commissioners never voted to include them in the bargaining unit and the positions are confidential and managerial positions and should not

be included in the bargaining unit. (See Brief of the Respondent, Page 2).<sup>11</sup>

#### IV. DISCUSSION

On February 9, 1990, at a meeting of the Board of Commissioners, the Commissioners voted 3-2 to include the positions of Maintenance Superintendent (occupied by Frank Alexander) and Chief of Rental Assistance (occupied by Mark Rowland) within the bargaining unit represented by the Union. (Respondent's Exhibit 3 Pages 87-91). This action was taken over the strenuous opposition of Executive Director Burgess who objected on the basis that the two (2) positions were senior staff positions and were supervisory in nature and that in the event of a strike or job action, he would have to rely on division heads (including the two (2) in question) to continue operations and that division heads who are also Union Members may be required to honor other Union actions rather than supporting the Executive Director. (See Respondent's Exhibit 3, Page 91) In addition, Burgess testified by Deposition that on that date, he also advised the Board of Commissioners that they would be setting a precedent that would open the door to any other management people who cared to join. (Deposition of Burgess, Page 7). It is to be noted that at the time this action was taken, the Personnel Policy of the Respondent included within the classification of "Administrative, Non-Union" the positions of Maintenance Superintendent and Chief of Rental Assistance as well as the positions of Executive Secretary and Comptroller. (See Employer Exhibit 1, Page 3). It is to be further noted that at no time was there ever a vote taken to amend the Personnel Policy as

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<sup>11</sup> As the Board views this Unfair Labor Practice proceeding, the issue before it is whether the inclusion of the positions of Executive Secretary and Comptroller in the bargaining unit by Executive Director Burgess was appropriate. If so, the Board must then determine if the Respondent's subsequent conduct constituted an Unfair Labor Practice. If the inclusion was inappropriate, the matter ends at that point. In any event, the Board will not examine whether the Executive Secretary and Comptroller are confidential employees, managerial employees or top level supervisory employees so as to be excluded from the bargaining unit.

required by Article I D thereof. (See Employer Exhibit 1, Page 1 entitled "D Amendment")

According to Burgess, at the meeting of February 9, 1990, Mr. Varone's position, at the time, was that anyone employed by the Housing Authority should be allowed to join the Union if they so choose.<sup>12</sup> (Union Exhibit 9, Pages 7 and 12 - Deposition of Burgess taken on 12/8/92). A review of Mr. Varone's testimony on July 27, 1993, (Tr. Vol. 2) reveals that nowhere therein did he deny that it was his position on February 9, 1990, that anyone who wished to could join the Union (i.e. be included within the bargaining unit represented by the Union). It was against this background that Burgess was confronted with the request of the Executive Secretary (Mary Lennon) and later that of the Comptroller (James Goff) to be included within the bargaining unit. At no time between February 9, 1990, and May 31, 1991, did the Board of Commissioners convey to Burgess any instructions, directions, orders or other caveats that no other administrative positions were to be included in the bargaining unit represented by the Union. It was on May 31, 1991, that Burgess notified the Union that the Board of Commissioners had at their meeting of February 9, 1991, (the year should have been 1990) voted to allow the Maintenance Superintendent and Chief of Rental Assistance, two (2) administrative positions, to enter the Teamsters Union and set the precedent for all administrative people to do the same if they so choose. He further advised the Union that "In view of this, I have no objection to any staff people at the Pawtucket Housing Authority availing themselves of the same union alliance which was granted to the above two positions" (Union Exhibit 2). As a result of this letter, the Union, on June 3, 1991, requested a meeting "to conclude the aforementioned business at hand". (Union Exhibit 3). On June 3, 1991, Burgess sent a Memorandum to all members of the Teamsters Local Union 64 advising them that as of May 31, 1991, the position of Executive

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<sup>12</sup> Again, the confusion between membership in the Union and inclusion within the bargaining unit is evident. Clearly, what the parties were referring to was inclusion within the bargaining unit.

Secretary had been added to those covered by the provisions of the existing Collective Bargaining Agreement. (Union Exhibit 4). It is to be noted that the Board of Commissioners, although they met on June 6, 13, and 20 of 1991, took no action with respect to the position of Executive Secretary being included within the bargaining unit represented by the Union. At the meeting of the Board of Commissioners held on June 20, 1991, it clearly became known to the Board of Commissioners that the Executive Secretary (Mary Lennon) had joined the Union.<sup>13</sup> (Respondent's Exhibit 3, Page 146). Further discussion of the request of the Comptroller to become part of the bargaining unit was tabled. (Respondent's Exhibit 3, Page 146). It was not until the Board of Commissioners meeting of July 9, 1991, that the Board of Commissioners voted not to revise the Personnel Policy so as to include the positions of Executive Secretary and Comptroller within the bargaining unit. It is also clear from the minutes of said meeting that the Board of Commissioners knew that both Mary Lennon (Executive Secretary) and James Goff (Comptroller) were paying dues to the Union. (See comments of Commissioner Walsh when he asked Burgess why Burgess had allowed them to pay Union dues. Respondent's Exhibit 3, Page 148). The Board can only conclude that by this date, i.e. July 9, 1991, the Board of Commissioners knew that both the positions of Executive Secretary and Comptroller had been included within the Union's bargaining unit by the Amendments (Union Exhibits 4 and 5). While there were meetings of the Board of Commissioners where they took the position that the positions of Executive Secretary and Comptroller should not be included in the Union's bargaining unit, they took no action to negate, repeal or repudiate the Amendments to the Collective Bargaining Agreement which included the two (2) disputed positions within the Union's bargaining unit.

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<sup>13</sup> In fact, she had been included within the bargaining unit. While there is much confusion in the record between Union membership and inclusion within the bargaining unit, the Board is satisfied that the Commissioner's were aware that Burgess had advised the Union that the position of Executive Secretary had been included within the bargaining unit.

Unlike the facts in Warwick Teachers' Union v. Warwick School Committee, 624 A2d 849 (RI 1993), Burgess was under no limitation by the Respondent acting through its Board of Commissioners not to include other positions classified as Administrative, Non-Union within the Union's bargaining unit. In fact, Burgess only did what the Board of Commissioners had done on February 9, 1990, when they included the Administrative, Non-Union positions of Maintenance Superintendent and Chief of Rental Assistance within the Union's bargaining unit. As Executive Director, Burgess had broad authority to reach agreements with the Union. This broad authority in the Executive Director was confirmed by the testimony of the then Executive Director Moussally when he admitted that he had entered into an agreement with Local 64 amending the Collective Bargaining Agreement. (Tr. Vol. 1, page 37-39; Union Exhibit 10) This Amendment extended the effective period of the 1989-1992 Collective Bargaining Agreement with Local 64 for an additional year and as previously noted made several significant changes to the terms of the 1989-1992 Collective Bargaining Agreement. While it is true that discussion did take place with the Board of Commissioners concerning the contents of this agreement, the final agreement was in fact never authorized, by the Commissioners, to be signed by Moussally. In view of the entire record in this case, it is the Board's conclusion that Burgess had the authority to execute the Amendments (Union Exhibits 4 and 5) including the positions of Executive Secretary and Comptroller within the Union's bargaining unit. Even if this is not the case, the Board also concludes from a review of the entire record that Burgess had the apparent authority to include the two (2) positions within the Union's bargaining unit. While it is true that an Agent of a municipality must have actual authority to bind the municipality, Housing Authorities, while exercising some governmental goals, are clearly different from a municipality. See Woonsocket Housing Authority v. Fetzik, 289 A2d 658 (RI 1972); Parent v. Woonsocket Housing Authority, 87 RI 444, 447 (1958); State ex rel Costello v.

Powers, 80 RI 390, 97 A2d 584 (1953). The Board concludes that unlike municipalities, Housing Authority's Agents need only have apparent authority to bind the authority. As pointed out by the Union in its Brief (Pages 12 and 13):

"The Board of Commissioners never involved itself in settlement agreements or in grievance processes. Local 64 was aware that the Executive Director had the authority to settle grievances arising under the Collective Bargaining Agreement without a prior vote or subsequent ratification vote by the Board of Commissioners.... Notwithstanding the Board's protestations regarding the limits on the Executive Director's authority, the Board of Commissioners has not clarified the limits on the authority of the Executive Director to enter into such agreements as evidence by the present Executive Director's authority to enter an agreement with Local 64."

One might ask why, if Burgess had the authority or even apparent authority to include the positions of Executive Secretary and Comptroller in the Union's bargaining unit did the Union agree to the resolution of including these two (2) positions in its unit by Arbitration as set forth in Item 13 of Union Exhibit 10? Item 13 when read carefully does not leave to the Arbitrator the sole determination as to the inclusion or exclusion of the two (2) positions in relation to the bargaining unit. The Arbitration Decision is appealable by either party. Moreover, the Union has charged in this proceeding that the Respondent was guilty of an Unfair Labor Practice by its unilateral exclusion of the two (2) positions from the bargaining unit after agreeing to include them. Further, the assignment of work to the Executive Secretary and Comptroller would constitute the assignment of bargaining unit work to management employees in violation of the agreements executed by Burgess and finally, the insistence of the Respondent in refusing to discuss the inclusion of the two (2) positions constitutes a refusal to bargain.

Having determined that Burgess had the authority to execute Amendment No. 3 including the position of Executive Secretary within the bargaining unit (Union Exhibit 4) and Amendment No. 4 including the position of Comptroller within the bargaining unit (Union Exhibit 5), the refusal of the Board of Commissioners to



recognize the inclusion of said positions within the Collective Bargaining unit constituted an interference, restraint and coercion with the free exercise of the rights guaranteed by R.I.G.L. 28-7-12<sup>14</sup> in violation of R.I.G.L. 28-7-13 (10)<sup>15</sup> and also constituted a refusal to bargain in good faith in violation of R.I.G.L. 28-7-13 (6).<sup>16</sup>

From all of the evidence, the Board cannot find a violation of R.I.G.L. 28-7-13 (5) and (7). The Union has also alleged a violation of R.I.G.L. 28-7-13 (11). R.I.G.L. 28-7-13 (11) provides that it shall be an Unfair Labor Practice for an Employer: "To fail to implement an arbitrator's award unless there is a stay of its implementation by a court of competent jurisdiction or upon removal of any such stay" The Award referred to (Union Exhibit 8) has no bearing upon the matter here pending before the Board. Therefore, the Board finds that there was no violation of R.I.G.L. 28-7-13 (11)

Finally, it is also the Board's conclusion that the Respondent through the action and non-action of its Board of Commissioners in relating to Burgess's agreed Amendments to include the Executive Secretary and Comptroller in the Union's bargaining unit constituted a ratification thereof. It was clear to the Board of Commissioners that from at least July 9, 1991, that the occupants

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<sup>14</sup> R.I.G.L. 28-7-12 in pertinent part provides that:

"Employees shall have the right of self organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection, free from interference, restraint, or coercion from any source..."

<sup>15</sup> R.I.G.L. 28-7-13 (10) provides that it is an Unfair Labor Practice for an employer:

"To do any acts, other than those already enumerated in this section, which interfere with, restrain or coerce employees in the exercise of the rights guaranteed by §28-7-12."

<sup>16</sup> R.I.G.L. 28-7-13 (6) provides that it is an Unfair Labor Practice for an employer:

"To refuse to bargain collectively with the representatives of employees..."

of these two (2) positions were paying dues to the Union; that were carried on the Seniority List of members of the Union's bargaining unit (Union Exhibit 11 and that even after it learned that the Amendments, i.e. No. 3 and No. 4, to Collective Bargaining Agreement had been executed, the Board of Commissioners took no action to negate or repudiate the same. best that can be said about the actions of the Board of Commissioners is that they were opposed to the idea of including these two (2) Administrative, Non-Union positions in the Union's bargaining unit in spite of their previous inclusion of two other Administrative, Non-Union positions in the Union's bargaining unit. There is no doubt in the minds of the members of the Board that such conduct was tantamount to an approval of Burgess's Amendments to the Collective Bargaining Agreement.

#### V. FINDINGS OF FACT

1. The Union is a labor organization within the meaning of the Rhode Island State Labor Relations Act, which exists and is constituted for the purpose, in whole or in part, of collective bargaining relative to wages, rates of pay, hours, working conditions and other terms and conditions of employment.

2. The Respondent is an employer within the meaning of Rhode Island State Labor Relations Act

3. As of April 1, 1989, the Respondent and the Union entered into a Collective Bargaining Agreement covering the period April 1, 1989, to March 31, 1992.

4. Article I of said Collective Bargaining Agreement, referred to in Paragraph 3 above, set forth the bargaining unit as follows: "...all persons employed by the Authority in following classifications.

|                     |                         |
|---------------------|-------------------------|
| Project Manager     | Sr. Service Coordinator |
| Program Manager     | Program Clerk           |
| Receptionist/Typist | Bookkeeper              |
| Management Aide     | Tenant Selector         |
|                     | Clerk/Cashier"          |

5. During the term of said Collective Bargaining Agreement referred to in Paragraph 3 above, the Respondent had in existence

a Personnel Policy which provided in I.D. that: "The personnel policy may be amended only with the approval of at least three members of the Board of Commissioners and the recognized representatives of the employees".

6. The Personnel Policy on Page 3 thereof provided as follows, in relation to the categorization of employees of the Respondent:

"1. Administrative, Non-Union

Executive Director, Assistant Director, Comptroller, Maintenance Superintendent, Executive Secretary, Modernization Coordinator, and Chief of Rental Assistance.

2. Management/office (Teamsters Local Union No. 64)

Project Manager, Program Manager, Senior Services Coordinator, Bookkeeper, Management Aide, Clerk Cashier, Program Clerk, Tenant Selection Clerk, and Receptionist/Typist.

"

7 On February 9, 1990, at the request of the Chief of Rental Assistance (Mark Rowland) and Maintenance Superintendent (Frank Alexander, both of whom were listed as "Administrative, Non-Union", the Respondent voted to allow them to join the Union<sup>17</sup> and they both became members of the bargaining unit.

8. The undisputed testimony is that Commissioner Varone stated that it was his position that anyone should be allowed to be in the Union's bargaining unit if they so choose and a majority of the Commissioners supported his motion to include the Chief of Rental Assistance and Maintenance Superintendent within the bargaining unit at the meeting of February 9, 1990.

9. The vote of February 9, 1990, referred to in Paragraph 7 hereof was passed over the strong and strenuous objection of the then Executive Director, John S. Burgess, based upon the fact that both Mark Rowland (Chief of Rental Assistance) and Frank Alexander (Maintenance Superintendent) held senior staff positions serving in a supervisory capacity and for various reasons did not belong in the Union's bargaining unit

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<sup>17</sup> As has repeatedly been pointed out herein, the discussion of joining the Union was in fact the right to belong to the bargaining unit represented by the Union.

The Personnel Policy was not changed at that time to delete the positions of Chief of Rental Assistance and/or Maintenance Superintendent from the category of Administrative, Non-Union.

11. The Personnel Policy up to the time of the Hearing herein on July 27, 1993, had not been changed so as to delete the positions of Chief of Rental Assistance and/or Maintenance Superintendent from the category of Administrative, Non-Union.

Article I of the Collective Bargaining Agreement setting out the scope of the bargaining unit was not amended to include the positions of Chief of Rental Assistance and Maintenance Superintendent either at the time the Respondent voted to include them within the bargaining unit nor up to the time of the Formal Hearing herein.

At no time after February 9, 1990, did the Commissioners of the Respondent once convey to Executive Director Burgess any instructions, directions, orders, or other caveats that no other Administrative, Non-Union positions were to be included in the bargaining unit represented by the Union.

14. In the Spring of 1991, the then Executive Secretary of the Respondent, whose position was classified under the Personnel Policy as Administrative, Non-Union, the same classification as that of Chief of Rental Assistance and Maintenance Superintendent requested to be included within the Union's bargaining unit.

On May 31, 1991, Burgess, the then Executive Director included the position of Executive Secretary within the bargaining unit (Union Exhibit 7 - Seniority List).

On June 3, 1991, the then Executive Director sent to all members of the Union an Amendment to the Collective Bargaining Agreement which provided that Article X Wages be amended by adding the position of Executive Secretary to the bargaining unit and set the salary for such position

In early June 1991, James Goff, the Comptroller requested to be included within the Union's bargaining unit and his request

discussed at a meeting of the Board of Commissioners of the Respondent on June 13, 1991.

18. At the meeting of June 13, 1991, with Burgess, the then Executive Director, not in attendance, the Commissioners of the Respondent expressed feelings that management people should not be in the Union (i.e. bargaining unit) (Respondent's Exhibit 3, Page 144).

19. On June 17, 1991, Burgess, the then Executive Director, sent to all members of the Union an Amendment to the Collective Bargaining Agreement which provided that Article X Wages be amended by adding the position of Comptroller to the bargaining unit and set the salary for such position (Union Exhibit 5).

20. At a meeting of the Commissioners of the Respondent held on June 20, 1991, a discussion took place as to the inclusion of position of Comptroller within the bargaining unit with Burgess, the Executive Director, taking the position that the Commissioners had allowed the Chief of Rental Assistance and Maintenance Superintendent, which were management positions, to be included within the bargaining unit and to deny inclusion of the position of Comptroller would be inconsistent (Employer Exhibit 3, Page 146). The discussion was tabled until the next meeting of the Commission.

21. At the meeting of June 20, 1991, the Commissioners of the Respondent were aware that the position of Executive Secretary had been included within the bargaining unit (Employer Exhibit 3, Page 146).

22. At the next meeting of the Commissioners of the Respondent held on July 9, 1991, they voted not to revise the Personnel Policy to take the positions of Executive Secretary and Comptroller out of the classification of Administrative, Non-Union which, in substance, would leave them outside the Union's bargaining unit.

23. Pursuant to the provisions of the Collective Bargaining Agreement, the acting Executive Director of the Respondent in January of 1992 (Union Exhibit 7) prepared a Seniority List of

members of the Union's bargaining unit and the names of the Executive Secretary (Mary Lennon) and Comptroller (James Goff) appeared,thereon.

24. On said Seniority List, referred to in Paragraph 23 above, Mary Lennon (Executive Secretary) was listed as included within the bargaining unit on May 31, 1991, and James Goff (Comptroller) was listed as included within the bargaining unit on June 17, 1991

25. At the meeting of the Commissioners of the Respondent held on February 20, 1992, it was noted that the Seniority List did contain the names of Mary Lennon (Executive Secretary) and James Goff (Comptroller). No action was ever taken by the Respondent to remove the positions of Executive Secretary and/or Comptroller from the Seniority List.

26. Both the Executive Secretary and Comptroller paid dues to the Union following their inclusion in the bargaining unit and such became known to the Commissioners.

27. At the meeting of the Commissioners of the Respondent held on April 10, 1992, negotiations for a new Collective Bargaining Agreement commenced with the Respondent taking the position that negotiations be delayed until the matter of the inclusion of the positions of Executive Secretary and Comptroller within the bargaining unit was decided.

28. Negotiations did take place following the meeting of April 10, 1992, and at a meeting of the Commissioners of the Respondent held on August 26, 1992, the then Executive Director, Roland C. Moussally, reported that negotiations had taken place and that agreements had been reached on several issues. The minutes of the meeting of August 26, 1992, of the Board of Commissioners reflect that the Respondent "...will not agree to the inclusion of the Comptroller and the Executive Secretary in the contract".

29. At a meeting of the Commissioners of the Respondent held on October 29, 1992, the Commissioners agreed upon the negotiated Collective Bargaining Agreement provided it contained a provision to allow the issue of the inclusion of the positions of Executive

Secretary and Comptroller within the bargaining unit to go to arbitration with each party having the right to appeal the arbitration decision

30. At a meeting of the Board of Commissioners of the Respondent held on November 10, 1992, it was voted to accept the contract

31. A Memorandum of Agreement which extended the Collective Bargaining Agreement and contains several changes did in fact contain a provision "13" which provided that both the Respondent and Union "...agree to allow the issue of the appropriateness of the positions of Comptroller and Executive Secretary as covered positions under the Labor Agreement to be handled through the arbitration process. Both the authority and the union reserve their rights to appeal the decision of the arbitrator".

32. It was the understanding of the Union and Respondent that the term Arbitration was interchangeable with a determination of this Board as to inclusion or exclusion of those positions in relation to the bargaining unit

33. On May 31, 1991, and June 17, 1991, when the Amendments to the Collective Bargaining Agreement (Union Exhibits 4 and 5) were executed by Burgess, the then Executive Director, the Union knew that Burgess had executed the same pursuant to the Respondent's authority to include the Administrative, Non-Union positions of Maintenance Superintendent and Chief of Rental Assistance within the bargaining unit.

34. Commissioner Varone had made it known prior to May 31, 1991, and June 17, 1991, that it was his position that anyone who desired to belong to the Union (i.e. bargaining unit) could do so.

35. The Executive Director Burgess had the authority by past actions to enter into the Amendment to the Collective Bargaining Agreement dated May 31, 1991, in relation to the inclusion of the position of Executive Secretary within the bargaining unit.

36. The Executive Director Burgess had the authority by past actions to enter into the Amendment to the Collective Bargaining

Agreement dated June 17, 1991, in relation to the inclusion of position of Comptroller within the bargaining unit

37. The Respondent knew shortly after May 31, 1991, that position of Executive Secretary had been included by Burgess, the Executive Director, within the bargaining unit based upon Respondent's prior action of inclusion of the managerial positions of Chief of Rental Assistance and Maintenance Superintendent within the bargaining unit on February 9, 1990.

38. From shortly after May 31, 1991, to the date of the Formal Hearings herein, the Respondent failed to take any action to repudiate the Amendment of the Collective Bargaining Agreement to include the position of Executive Secretary within the bargaining unit.

39. The Respondent knew shortly after June 17, 1991, that position of Comptroller had been included by Burgess, the Executive Director, within the bargaining unit based upon the Respondent's prior action of inclusion of the managerial positions of Chief of Rental Assistance and Maintenance Superintendent within bargaining unit on February 9, 1990.

40. From shortly after June 17, 1991, to the date of Formal Hearings herein, the Respondent failed to take any formal action to repudiate the Amendment of the Collective Bargaining Agreement to include the position of Comptroller within the bargaining unit.

41. The Amendments to the Collective Bargaining Agreement dated May 31, 1991, and June 17, 1991, including the Executive Secretary and Comptroller within the bargaining unit were validly executed by the then Executive Director Burgess under his actual authority.

42. If Burgess did not have actual authority to execute the Amendments to the Collective Bargaining Agreement dated May 1991, and June 17, 1991, (Union Exhibits 4 and 5) including the Executive Secretary and Comptroller within the bargaining unit, he had, insofar as the Union was concerned, the apparent authority to do so.



If Burgess did not have either the actual or apparent authority to execute the Amendments to the Collective Bargaining Agreement dated May 31, 1991, and June 17, 1991, (Union Exhibits 4 and 5) which included the Executive Secretary and Comptroller within the bargaining unit, the Respondent, by its failure to take any action to repudiate those Amendments within a reasonable time waived its right to do so and is estopped to deny the validity of the same.

44. The action of the Respondent in refusing to recognize the inclusion of the Executive Secretary and Comptroller within the Union's bargaining unit after their inclusion on May 31, 1991, and June 17, 1991, respectively, constituted a violation of the rights of the employees within the bargaining unit guaranteed by R.I.G.L. 28-7-12 and was a violation of R.I.G.L. 28-7-13 (10).

45. The actions of the Respondent in refusing to recognize the inclusion of the Executive Secretary and Comptroller within the bargaining unit and its insistence to exclude them from the bargaining unit was a refusal to bargain in violation of R.I.G.L. 28-7-13 (6).

## **VI. CONCLUSIONS OF LAW**

1. The Union has proven by a fair preponderance of the credible evidence that Executive Director Burgess had both the actual and/or apparent authority to include the positions of Executive Secretary and Comptroller within the Union's bargaining unit.

2. The Union has proven by a fair preponderance of the credible evidence that the Respondent by its actions and inaction in relation to the written Amendments (Union Exhibits 4 and 5) including the positions of Executive Secretary and Comptroller in the bargaining unit waived its right to object thereto

3. The Union has proven by a fair preponderance of the credible evidence that the Respondent by its actions and inaction in relation to the written Amendments (Union Exhibits 4 and 5) including the positions of Executive Secretary and Comptroller in

bargaining unit is estopped from alleging their improper inclusion within the bargaining unit

4. The Union has proven by a fair preponderance of the credible evidence that the Respondent by its actions violated R.I.G.L. 28-7-13 (6) by a refusal to bargain with respect to the positions of Executive Secretary and Comptroller.

5. The Union has proven by a fair preponderance of the credible evidence that the Respondent violated R.I.G.L. 28-7-13 by its actions which in effect denied employees in the bargaining unit the rights guaranteed to them by R.I.G.L. 28-7-12.

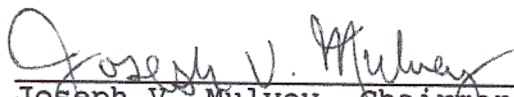
**ORDER**

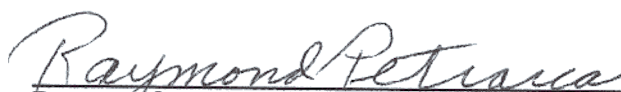
The Respondent is Ordered to:

1. Cease and Desist from refusing to recognize the inclusion of the positions of Executive Secretary and Comptroller within the Bargaining unit represented by the Union.

2. Bargain with the Union as to rate of pay, and other working conditions applicable to the positions of Executive Secretary and Comptroller

**RHODE ISLAND STATE LABOR RELATIONS BOARD**

  
Joseph V. Mulvey, Chairman


  
Raymond Petrarca, Member

  
Glenn H. Edgecomb, Member

  
Daniel L. Beardsley, Jr., Member

Entered as Order of the  
Rhode Island State Labor Relations Board

Dated: October 17, 1995

By:   
AGENT OF THE BOARD